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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,241	02/20/2002	Patrice Duvert	022650-621	5583
7390	01/27/2004			EXAMINER
Mary Katherine Baumeister BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404				PRYOR, ALTON NATHANIEL
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/078,241	DUVERT, PATRICE	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-50 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 21,22,25,26 and 29-50 is/are allowed.  
 6) Claim(s) 1-20,23,24,27,28 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ .
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
 5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Final Rejection***

- I. Rejection of claims 11-26 under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained in light of amendment filed 11/12/03. Applicant has deleted the phrase "curative or preventive" from the claims.
- II. Rejection of claims 1-26 under 35 USC 103(a) as being obvious over Latrose on record will not be maintained in light of amendment filed 11/12/03. The language of the claims excludes the 2-imidazoline-5-one compound as a fungicide.

Applicant's arguments filed 11/12/03 have been fully considered but they are not persuasive. See reasons below.

- III. Rejection of claims 1-20,23,24 under 35 USC 102(e) as being anticipated by Oguri on record will be maintained in light of amendment filed 11/12/03 for reasons on record and reasons as follows. New claims 27 and 28 are added to this rejection.  
Applicant argues that claim 1 has been amended to include the only instant fungicidal components: BAS490F (A) or SSF-129 (A) and iprodione (B) having a A/B weight ratio between 0.02 and 5. Applicant argues that Oguri's Formulation Examples 7-9 do not specifically teach formula Ia (BAS409) plus iprodione or formula Ie (SSF-129) plus iprodione. Applicant argues that Oguri teaches 21 possible combinations. Applicant argues that instant specification provides synergistic data for the two combinations and that Oguri provides no comparable results. Examiner argues that within the small combination window of 21 possible combinations taught by Oguri's Formulation Examples lie the two instant fungicidal combinations, i.e., (BAS409) plus iprodione and

(SSF-129) plus iprodione. Because a 21 combination window is considered small, Examiner reiterates that Oguri anticipates the instant combinations. With respect to Applicant's data, Examiner argues that Applicant does not clearly show A plus B synergism, i.e., Applicant does not show results for A alone, B alone and the A plus B combination.

***Allowable Subject Matter***

Claims 21,22,25,26,29-50 are allowable. The prior art does not teach the instant method comprising the instant ratio of A/B being applied at instant rate of application.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
Alton N. Pryor  
Primary Examiner  
AU 1616